

HOUSE No. 1384

By Mr. Kulik of Worthington, petition of John W. Scibak and others for legislation to protect local food supplies, farmland and the viability of farming. Environment, Natural Resources and Agriculture.

The Commonwealth of Massachusetts

PETITION OF:

John W. Scibak
Anne M. Gobi
Stephen Kulik

Denis E. Guyer
Ellen Story
Christopher J. Donelan

In the Year Two Thousand and Five.

AN ACT TO PROTECT LOCAL FOOD SUPPLIES, FARMLAND AND FARM VIABILITY.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 7 of the General Laws, as appearing in
2 the 2002 Official Edition, is hereby amended by inserting after
3 section 23A the following section:—

4 Section 23B.

5 (a) Notwithstanding the provisions of any general or special
6 law to the contrary, and to the extent permitted by federal law, a
7 state agency or a state authority shall, when purchasing products
8 of agriculture as defined in M.G.L. c. 128 s. 1A, including but not
9 limited to fruits, vegetables, eggs, dairy products, meats, crops,
10 horticultural products or products processed into value added
11 products as part of a Massachusetts farm operation, prefer prod-
12 ucts grown, produced using locally grown products or harvested
13 in the Commonwealth.

14 (b) To effectuate such a preference for such products of agricul-
15 ture grown, produced using locally grown products or harvested
16 in the Commonwealth, the state purchasing agent responsible for

17 procuring such products of agriculture on behalf of the state
18 agency or state authority shall (1) In advertising for bids, con-
19 tracting, and otherwise, make reasonable efforts to facilitate the
20 purchase of such products of agriculture grown, produced using
21 locally grown products, or harvested in the Commonwealth; and
22 (2) Purchase such products of agriculture grown, produced using
23 locally grown products or harvested in the Commonwealth unless
24 the price of such goods exceeds by more than 10 percent the price
25 of products of agriculture grown, produced, or harvested outside
26 of the Commonwealth; a product of agriculture is not grown, pro-
27 duced using locally grown products, harvested or otherwise avail-
28 able from any producer in the Commonwealth at the time of the
29 procurement; or compliance with this section would eliminate the
30 only bid or offer of a product of agriculture or would result in
31 inadequate competition.

1 SECTION 2. Chapter 30B of the General Laws, as appearing in
2 the 2002 Official Edition, is hereby amended by inserting after
3 section 19 the following section:— Section 20.

4 (a) Notwithstanding the provisions of any general or special
5 law to the contrary, and to the extent permitted by federal law, a
6 governmental body may, by a majority vote, establish a preference
7 for products of agriculture as defined in M.G.L. c. 128 s. 1A,
8 including but not limited to fruits, vegetables, eggs, dairy prod-
9 ucts, meats, crops horticultural products or products processed
10 into value added products as part of a Massachusetts farm opera-
11 tion, prefer products grown, produced using locally grown prod-
12 ucts or harvested in the Commonwealth.

13 (b) Wherever a governmental body by a majority vote estab-
14 lishes a preference for the procurement of such products of agri-
15 culture grown, produced or harvested in the Commonwealth, the
16 chief procurement officer or procurement officer responsible for
17 procuring agricultural products on behalf of the government body
18 shall effectuate such preference by:

19 (1) In advertising for bids, contracting, and otherwise, making
20 reasonable efforts to facilitate the purchase of such products of
21 agriculture grown, produced, or harvested in the Commonwealth;
22 and

23 (2) Purchasing such products of agriculture grown, produced or
24 harvested in the Commonwealth unless the price of such goods
25 exceeds by more than 10 percent the price of agricultural products
26 grown, produced, or harvested outside of the Commonwealth; an
27 agricultural product is not grown, produced, harvested or other-
28 wise available from any producer in the Commonwealth at the
29 time of the procurement; or compliance with this section would
30 eliminate the only bid or offer of an agricultural product or would
31 result in inadequate competition.

1 SECTION 3. Chapter 30B of the General Laws, as appearing in
2 the 2002 Official Edition, is hereby amended by amending section
3 4 as follows:—

4 In section 4(a), inserting after the words “Except as permitted
5 pursuant to section seven” add “and section 4(d),”

6 And inserting after section 4(c) the following section:—

7 Section 4(d) A procurement officer may award a contract in an
8 amount of less than \$25,000 for the procurement of products of
9 agriculture as defined in M.G.L. c. 128 s. 1A, including but not
10 limited to fruits, vegetables, eggs, dairy products, meats and crops
11 horticultural products or products processed into value added
12 products as part of a Massachusetts farm operation, that are
13 grown, produced using locally grown products, or harvested in the
14 Commonwealth, without seeking quotations as required under
15 section 4(a), provided that the officer exercises sound business
16 practices.

1 SECTION 4. Chapter 94 of the General Laws, as appearing in
2 the 2000 Official Edition, is hereby amended by striking out
3 section 99B, and inserting in place thereof the following
4 section:—

5 Section 99B. No person shall sell or offer to sell or pack for
6 sale or distribution in the Commonwealth fruit, vegetables or
7 turkeys in containers bearing the label or designation “native” or
8 “local” nor cause fruit, vegetables or turkeys to be advertised as
9 “native” or “local” unless the name of the state in which such
10 fruit, vegetables or turkeys were grown appears immediately after
11 the word “native” or “local”. Whoever violates any provision of

12 this section shall be punished by a fine of not more than one hun-
13 dred dollars.

1 SECTION 5. Chapter 40A of the General Laws, as appearing in
2 the 2002 Official Edition, is hereby amended by striking out the
3 first paragraph of section three, and inserting in place thereof the
4 following paragraph:—

5 Section 3. No zoning ordinance or by-law shall regulate or
6 restrict the use of materials, or methods of construction of struc-
7 tures regulated by the state building code, nor shall any such ordi-
8 nance or by-law prohibit, unreasonably regulate or require a
9 special permit for the use of land for the primary purpose of com-
10 mercial agriculture, aquaculture, silvaculture, horticulture, flori-
11 culture, or viticulture; nor prohibit, or unreasonably regulate, or
12 require a special permit for the use, expansion, reconstruction or
13 construction of structures thereon for the primary purpose of com-
14 mercial agriculture, aquaculture, silvaculture, horticulture, flori-
15 culture, or viticulture, including those facilities for the sale of
16 produce, and wine and dairy products, provided that either during
17 the months of June, July, August, and September of every year or
18 during the harvest season of the primary crop raised on land of the
19 owner or lessee, twenty-five percent of such products for sale,
20 based on either gross sales dollars or volume, have been produced
21 by the owner or lessee of the land on which the facility is located,
22 or at least twenty-five percent of such products for sale, based on
23 either gross annual sales or annual volume, have been produced
24 by the owner or lessee of the land on which the facility is located,
25 and at least an additional twenty-five percent of such products for
26 sale, based upon either gross annual sales or annual volume, have
27 been produced in Massachusetts on land, other than that on which
28 the facility is located, used for the primary purpose of commercial
29 agriculture, aquaculture, silvaculture, horticulture, floriculture, or
30 viticulture, whether by the owner or lessee of the land on which
31 the facility is located or by another; except that all such activities
32 may be limited to parcels of five acres or more in area not zoned
33 for agriculture, aquaculture, silvaculture, horticulture, floriculture,
34 or viticulture. For such purposes, land divided by a public or pri-
35 vate way or a waterway shall be construed as one parcel. No
36 zoning ordinance or by-law shall exempt land or structures from

37 flood plain or wetlands regulations established pursuant to general
38 law. For the purposes of this section, the term agriculture shall be
39 as defined in section one A of chapter one hundred and twenty-
40 eight, and the term horticulture shall include the growing and
41 keeping of nursery stock and the sale thereof. Said nursery stock
42 shall be considered to be produced by the owner or lessee of the
43 land if it is nourished, maintained and managed while on the
44 premises.

1 SECTION 6. MassDevelopment is hereby authorized and
2 directed to establish, subject to appropriation, a loan program, to
3 be administered in consultation with the commissioner of the
4 department of food and agriculture, to provide loans on favorable
5 terms and conditions to farmers and groups of farmers for the
6 following purposes: marketing of agricultural products grown in
7 Massachusetts; development of agricultural producer coopera-
8 tives; development or improvement of innovative agricultural
9 enterprises, including but not limited to enterprises producing
10 value-added or organically produced agricultural products; execu-
11 tion of business plans approved by the commissioner of the
12 department of food and agriculture pursuant to the Farm Viability
13 Enhancement Program or similar programs; compliance with envi-
14 ronmental laws or regulations; and agricultural activities under-
15 taken by qualified beginning farmers as defined in section 22 of
16 this Act. In establishing the loan program authorized under this
17 section, MassDevelopment shall utilize, to the extent practicable
18 and appropriate to making available loans on favorable terms and
19 conditions for the purposes described in this section, arrangements
20 with private lending institutions involving linked deposits, loan
21 guarantees, sharing of administrative costs, and other means
22 deemed appropriate by MassDevelopment.

1 SECTION 7. Section 305A of chapter 94 of the General Laws,
2 as appearing in the 1998 Official Edition, is hereby amended by
3 inserting after the word “section.”, in line 13, the following sen-
4 tence:— The commissioner of public health shall not, however,
5 require any manufacturer, producer or processor of food subject to
6 this chapter, including but not limited to milk, cream, apples, and
7 maple syrup, to conduct and fund tests of its private water sup-

8 plies other than tests for total coliform, nitrates, and nitrites,
9 where water from such supplies is not to be used as an ingredient
10 of a manufactured or processed food. For the purpose of this
11 section, water from private water supplies shall be deemed an
12 ingredient of manufactured or processed food only if it constitutes
13 one percent or more by volume of such food.

1 SECTION 8. Chapter 29 of the General Laws, as appearing in
2 the 2000 Official Edition, is hereby amended by inserting after
3 section 2VV the following new section:—

4 Section WW. There is hereby established and set up on the
5 books of the Commonwealth a separate fund to be known as the
6 Integrated Pest Management Fund. All amounts credited to such
7 fund shall be used, subject to appropriation, for the integrated pest
8 management programs, operated by the Department of Food and
9 Agriculture, found in item 2511-3002 of section two A of chapter
10 one hundred and fifty-nine of the Acts of 2000 for purposes
11 including, but not limited to: education, outreach, research,
12 labeling, and creating and providing incentives to use integrated
13 pest management; provided that the Department of Food and
14 Agriculture make at least 50 percent of such revenues available
15 for the same purposes at the University of Massachusetts;’ and
16 provided further, that the University shall not assess any overhead
17 costs or charges to monies allocated to said University from the
18 Integrated Pest Management Fund.

1 SECTION 9. Section 5 of chapter 90 of the General Laws, as
2 appearing in the 2000 Official Edition, is hereby amended by
3 adding the following new subsection:—

4 (5)(I) Notwithstanding the provisions of any general or specific
5 law to the contrary, the registrar is hereby authorized and directed
6 to issue farmer general registration number plates for terms of not
7 less than three years, and to set the expiration date of such farmer
8 general registration number plates in the months of January, Feb-
9 ruary, or March.

1 SECTION 10. Chapter 40A of the General Laws, as appearing
2 in the 2000 Official Edition, is hereby amended by inserting the
3 following after section 1A:—

4 Section 2. To protect the health, safety and general welfare of
5 their present and future inhabitants and of the people of the Com-
6 monwealth, cities and towns may adopt ordinances and by-laws to
7 protect the conservation, development and utilization of land used
8 for agriculture, as defined in section one A of chapter one hundred
9 and twenty-eight, and land used for forestry as defined in section
10 one of chapter sixty-one.

1 SECTION 11. Chapter 30A of the General Laws, as appearing
2 in the 2000 Official Edition, is hereby amended by adding at the
3 end thereof the following:—

4 Section 18. All state and regional agencies, boards and commis-
5 sions shall, before any rule, regulation, or other regulatory
6 requirement is promulgated, make public and post in writing
7 whether or not such rule, regulation, or other regulatory require-
8 ment will potentially have an adverse impact on commercial agri-
9 cultural operations based in the Commonwealth. For purposes of
10 this section, “agricultural” shall mean pertaining to agriculture as
11 defined in section one A of chapter one hundred and twenty-eight.
12 Further, if such rule, regulation, or other regulatory requirement is
13 determined to have such a potential impact on agriculture, the
14 responsible agency, board, or commission, in consultation with the
15 department of food and agriculture, shall conduct an impact
16 assessment to determine the extent of such impact, including, but
17 not limited to, the effect on future land use and related environ-
18 mental impacts, including costs, and submit to the joint commit-
19 tees of natural resources and agriculture and to the house and
20 senate committees on ways and means a copy of their findings at
21 least forty-five days prior to promulgation. All city and town
22 agencies, boards, and commissions shall, before enacting any rule,
23 regulation, law, by-law, ordinance, or other regulatory requirement
24 that will potentially have an adverse impact on commercial agri-
25 cultural operations based in the Commonwealth, complete a form
26 prescribed by the department of food and agriculture assessing
27 such potential impact and submit the form to the department of
28 food and agriculture at least ninety days prior to final enactment
29 of the rule, regulation, law, by-law, ordinance, or other regulatory
30 requirement. In the case of by-laws, ordinances, and other require-
31 ments subject to review by the Attorney General, such form shall

32 be submitted to the department of food and agriculture on the
33 same date a by-law, ordinance, or other requirement is submitted
34 to the Attorney General. No such state, regional, or local rule, reg-
35 ulation, law, by-law, ordinance, or other regulatory requirement,
36 except one of an emergency nature expiring in six months or less
37 for the purposes of protecting the health and safety of persons,
38 shall take effect until the provisions of this section have been
39 complied with.

1 SECTION 12. Section 11A of chapter 132A of the General
2 Laws, as appearing in the 2000 Official Edition, is hereby
3 amended by striking out the third sentence and inserting in place
4 thereof the following:— Title to agricultural preservation restric-
5 tions shall be held in the name of the Commonwealth; provided,
6 however, that a city or town in which such land is located, or a
7 charitable corporation, charitable trust, or land bank, which pro-
8 vides assistance satisfactory to the agricultural lands preservation
9 committee, including, but not limited to, providing funds or por-
10 tions thereof toward the purchase of such restriction, the pro-
11 viding of legal services, and monitoring and enforcement of the
12 preservation restriction, may hold title to such land jointly with
13 the Commonwealth. The commissioner of the department of food
14 and agriculture may issue a letter of intent requesting the assis-
15 tance of a non-profit organization as defined in subsection (c)(3)
16 of section 501 of the United States Internal Revenue Code, in
17 acquiring rights to certain agricultural land. If such organization
18 acquires such rights, it may sell them to said commissioner based
19 on a purchase agreement.

1 SECTION 13. Said section 11A of chapter 132A, as so
2 appearing, is further amended by inserting, after the last sentence
3 of the first paragraph, the following sentence:— Notwithstanding
4 any general or special law to the contrary, payments made to
5 acquire agricultural preservation restrictions as defined in section
6 thirty-one of chapter one hundred eighty-four and provided for in
7 this chapter may, upon the election of the person conveying such
8 restriction, be made in approximately equal installment payments
9 spanning not more than five years.

1 SECTION 14. Section 32 of chapter 184 of the General Laws,
2 as appearing in the 2000 Official Edition, is hereby amended by
3 striking out the second paragraph and inserting in place thereof
4 the following paragraph:—

5 Such conservation, preservation, agricultural presentation,
6 watershed preservation, and affordable housing restrictions are
7 interests in land, and may be acquired by any governmental body
8 or such charitable corporations and trusts which have power to
9 acquire interests in land, in the same manner as it may acquire
10 other interest in land. Such conservation, preservation, agricul-
11 tural preservation, watershed preservation, and affordable housing
12 restrictions may be enforced by injunction or other proceeding
13 and shall entitle representatives of the holder to enter the land in a
14 reasonable manner and at reasonable times to assure compliance.
15 Such restrictions may be released, in whole or in part, by the
16 holder for such consideration, if any, as the holder may determine,
17 in the same manner as the holder may dispose of land or other
18 interests in land, but only after a public hearing upon reasonable
19 public notice, by the governmental body holding the restriction, or
20 if held by a charitable corporation or trust, by the mayor, or in
21 cities having a city manager, the city manager, the city council of
22 the city or the selectmen of the town, whose approval shall be
23 required, and in the case of a restriction requiring approval by the
24 secretary of environmental affairs, the Massachusetts historical
25 commission, the commissioner of the department of food and
26 agriculture, the commissioner of the metropolitan district commis-
27 sion, or the director of the department of housing and community
28 development, only with like approval of the release. Such conser-
29 vation, agricultural preservation, and watershed preservation
30 restrictions, in addition to other requirements of this section, may
31 be released, in whole or in part, only with approval of two-thirds
32 of both branches of the general court, by a vote taken by the yeas
33 and nays, that the restriction shall be released for the public good.

1 SECTION 15. Said section 32 of chapter 184, as so appearing,
2 is hereby further amended by striking out the third paragraph and
3 by inserting in place thereof the following paragraph:—

4 No restriction that has been purchased with state funds or
5 which has been granted in consideration of a loan or grant made

6 with state funds shall be released unless it is repurchased by the
7 land owner at its then current fair market value. Funds so received
8 shall revert to the fund sources from which the original purchase,
9 loan, or grant was made, or, lacking such sources, shall be made
10 available to acquire similar interests in other land. Agricultural
11 preservation restrictions shall be released by the holder only if the
12 land is no longer deemed suitable for agricultural or horticultural
13 purposes and unless two-thirds of both branches of the general
14 court, by a vote taken by yeas and nays, vote that the restrictions
15 shall be released for the public good. Watershed preservation
16 restrictions shall be released by the holder only if the land is
17 deemed by the commissioner of the metropolitan district commis-
18 sion and the secretary of environmental affairs to no longer be of
19 any importance to the water supply or potential water supply of
20 the Commonwealth and unless two-thirds of both branches of the
21 general court, by a vote taken by yeas and nays, vote that the
22 restrictions shall be released for the public good.

1 SECTION 16. Said section 32 of chapter 184, as so appearing,
2 is hereby amended by inserting at the end of the first paragraph
3 thereof the following:— The common law doctrine of merger
4 shall not apply to any restrictions approved as provided in this
5 paragraph.

1 SECTION 17. Section 5A of chapter 79 of the General Laws,
2 as appearing in the 2000 Official Edition, is amended by inserting
3 in the first paragraph following the words “or antiquarian
4 interest”, the following:— “, and no property protected by a con-
5 servation, preservation, agricultural preservation, watershed
6 preservation, or affordable housing restriction under provisions of
7 section thirty-one through thirty-three of chapter one hundred
8 eighty-four”.

1 SECTION 18. Chapter 61A of the General Laws, as appearing
2 in the 2000 Official Edition, is hereby amended by inserting after
3 Section 6 thereof the following new section:—

4 Section 6A. Determination of Eligibility for Agricultural
5 Preservation Restriction Land. Notwithstanding the provisions of
6 section six, where land is held under an agricultural preservation

7 restriction pursuant to sections thirty-one through thirty-three of
8 chapter one hundred eighty-four of the General Laws, eligibility
9 of such land for valuation, assessment and taxation pursuant to
10 section four shall be determined once every five years. Applica-
11 tion therefor shall be submitted to the board of assessors of each
12 city or town in which such land is situated not later than October
13 first of the year preceding each five-tax-years' cycle for which
14 such valuation, assessment and taxation are being sought and may
15 not thereafter be withdrawn. Application shall be made on a form
16 prescribed by the commissioner of revenue and provided for the
17 use of claimants by said board of assessors. Such form shall pro-
18 vide for the reporting of information pertinent to the provisions of
19 this chapter and of Article XCIX of the Articles of Amendment to
20 the Constitution of the Commonwealth and for certification by the
21 applicant that he will immediately notify the board of assessors in
22 writing of any subsequently developing circumstance within his
23 control or knowledge which may cause a change in use of the land
24 covered by such form prior to October first next following. Any
25 application submitted under this section and covering leased land
26 shall be accompanied by a written statement signed by any lessee
27 of his intent to use such land for the purposes set forth in said
28 application. A certification by a landowner that the information
29 set forth in his application is true may be prescribed by said com-
30 missioner to be in lieu of a sworn statement to that effect. An
31 application so certified shall be considered as if made under oath
32 and subject to the same penalties as provided by law for perjury.
33 In the event of a change of use of the land that affects its status or
34 assessment under this chapter, the requirements of section six
35 shall apply to said land from the time of change in use forward.

1 SECTION 19. The provisions of sections 12 and 13 of this Act
2 shall not apply to agricultural preservation restrictions existing
3 before the date of enactment of this section. The remaining provi-
4 sions of this act shall be retroactive.